PT 98-73
Tax Type: PROPERTY TAX
Issue: Government Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

COUNTY OF COOK,
APPLICANT

v.

DEPARTMENT OF REVENUE
STATE OF ILLINOIS

No: 96-16-0757

Real Estate Exemption
for 1996 Tax Year

P.I.N: 17-09-461-013

Cook County Parcel

Alan I. Marcus
Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCE: Mr. Ares G. Dalianis, Assistant State's Attorney in the Civil Actions Bureau, Real Estate Tax Section, for the County of Cook, appeared on behalf of the County of Cook.

SYNOPSIS: This proceeding raises the following issues: (1) did the County of Cook (hereinafter the "County" or the "Applicant") in fact acquire an ownership interest in the fee of real estate identified by Cook County Parcel Index Number 17-09-461-013 (hereinafter the "subject parcel" or the "subject property") at any point during the 1996 assessment year (2) did any other entities hold leasehold interests in the subject property during that same assessment year (3) if applicant in fact acquired an ownership interest in the fee portion of the subject property during any portion of the 1996 assessment year, should it be entitled to an exemption from real estate taxes (for that portion of the 1996 assessment year during which its ownership

interest was in effect) under 35 **ILCS** 200/15-60[1] and (4) should leasehold assessments, which arise under 35 **ILCS** 200/9-195, be imposed on the leaseholds that remained in effect after applicant assumed ownership of the subject property.

The controversy arises as follows:

The County filed a Real Estate Tax Exemption Complaint with the Cook County Board of (Tax) Appeals (hereinafter the "Board") on February 7, 1997. (Dept. Group Ex. No. 1, Doc. A). The Board reviewed applicant's complaint and subsequently recommended to the Illinois Department of Revenue (hereinafter the "Department") that the non-leased portion be exempt during that 1% of the 1996 assessment year which began December 30, 1996 and ended December 31, 1996. (Dept. Group Ex. No. 1, Doc. B). In a determination dated May 11, 1997, the Department accepted the Board's recommendation. Said determination approved the exemption for 1% of the 1996 assessment year and specifically found that:

> ABOVE [SUBJECT] PARCEL IS EXEMPT EXCEPT FOR THE 155,409 SQUARE FEET BEING LEASED & A PROPORTIONATE AMOUNT OF LAND WHICH IS TAXABLE. (PROPERTY NOT IN EXEMPT USE)

Dept. Ex. No. 2.

Applicant subsequently filed a timely appeal as to this partial denial (Dept. Group Ex. No. 3) and thereafter presented evidence at a formal administrative hearing. Following submission of all evidence and a careful review of the record, it is recommended that the Department's determination be affirmed as issued.

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1. In People ex. rel. Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption necessarily depends on the statutory provisions in force during the time for which the exemption is claimed. This applicant seeks exemption from 1996 real estate taxes. Therefore, the applicable provisions are those found in the Property Tax Code, 35 **ILCS** 200/1 *et seq.*

FINDINGS OF FACT:

1. The Department's jurisdiction over this matter and its position therein, namely that the leased portions of the subject property (and an appropriate percentage of the underlying ground) were not in exempt use during the 1996 assessment year, are established by the admission into evidence of Dept. Group Ex. No. 1, Dept. Ex. No. 2.
2. Applicant is a body politic and corporate established pursuant to 55 **ILCS** 5/5-1001 and its predecessor provisions, Ill. Rev. Stat. 1991, ch. 34, ¶ 5-1001. Its corporate powers (which, *inter alia,* include authority to hold real and personal estate necessary for uses of the county as well as power to levy and collect certain taxes for county purposes)[2] are exercised by a Board of County Commissioners created by Article VII, Section 3 of the Illinois Constitution and 5 **ILCS** 5/5-1004. Administrative Notice.
3. The subject parcel, commonly known as the Brunswick Building, is located at 69 W. Washington, Chicago, IL 60602. It is situated on a lot that measures 241.27' x 183' and improved with a 37-story, 690,341 office building. Dept Group Ex. No. 1.
4. Applicant acquired ownership of the subject parcel via a special warranty deed dated December 30, 1996. Applicant Ex. No. 1.
5. The County purchased the subject property with the intention of using the entire office building for its own purposes. However, the following commercial leaseholds were in effect when applicant assumed ownership:

			% of TOTAL SQUARE	

2. For a comprehensive listing of the County's corporate powers, *see* 55 **ILCS** 5/5-1005, 5/5-1014; for information about its taxing powers, *see*, 55 **ILCS** 5/5-1024, 1025, 1031-1035.2.

TENANT	SUITE LOCATION	SQUARE FEET	FOOTAGE CONTAINED IN IMPROVEMENT	EXPIRATION DATE OF LEASEHOLD
Arthur Anderson	24, 25	36,165	5%[3]	12-31-1996
Arthur Anderson	16, 27-30	89,784	13%	02-16-1997
Ace Shoe	LL18	305	<1%	04-30-1998
AIMS Service	LL02	780	<1%	12-31-1996
Best's	LL1	2,252	<1%	09-14-1999
Caldwell	1420	752	<1%	04-30-1999
Eye Level	LL01	741	<1%	02-8-2000
Chadwick's	LL08	13,609	2%	05-31-2001
Grandma Gebhard	LL13	1,048	<1%	04-30-1997
Kushner	2238	792	<1%	Month to Month
Salem Services	LL14,15,16	2,362	<1%	12-31-1999
Maestro Gerhard	LL12	856	<1%	01-31-2001
Reibman, Hoffman & Baum	1620	2,619	<1%	4-30-1997
Office of the Building	1430	3,344	<1%	12-31-2000
TOTAL		**155,409**	**23%[4]**	

Applicant Ex. No. 2.

6. All of the leases provide, *inter alia*, that: (1) the tenants were to restrict their uses of the leaseholds to the commercial purposes described in their respective leases; (2) the tenants would pay specifically identified sums certain as rent; (3) all rental payments were to be made according to a specifically identified payment schedule; (4) the rental payments were subject to lump-sum or other adjustments that accounted for increases (or, if appropriate, decreases) in property taxes; (5) the tenants were to reimburse the landlord, upon demand, for any and all taxes payable by the landlord (other than net income taxes) including, but not necessarily limited to, any gross

3. I derived these percentages by dividing the square footage of a given leasehold by the total square footage of the improvement. Thus, for example, 36,165/690,341= 0.0524 (rounded four places past the decimal point) or 5% of the total square footage of the improvement.

4. 155,409/690,341 = 0.2251 (rounded four places past the decimal) or 23%.

income tax upon, allocable to, or measured by or on the gross or net rentals payable under the various leases.[5] Applicant Ex. Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14.

7. All the above leases remained in effect throughout the 1996 assessment year. *Id*.

8. applicant did not begin using any space in the office building for its own purposes until April, 1997. Applicant Ex. No. 15.

CONCLUSIONS OF LAW:

An examination of the record establishes that this applicant has demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exempting only the unleased portions of the subject property from 1996 real estate taxes, at least with respect to that 1% of the 1996 assessment year that began December 30, 1996 and ended December 31, 1996. Accordingly, under the reasoning given below, the Department's determination that the leased portions thereof, and an appropriate amount of the underlying ground, do not qualify for exemption under 35 **ILCS** 200/15-60 should be affirmed as issued. In support thereof, I make the following conclusions:

5. For further details about the leases, including the exact amount of each tenant's rental payment and the precise nature of each tenant's use, *see*, leases submitted as Applicant Ex. Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14.

A. Constitutional, Statutory and Other Preliminary Considerations

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

> The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo, Illinois v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

Pursuant to its Constitutional mandate, the General Assembly enacted the Property Tax Code 35 **ILCS** 200/1-3 *et seq.* The provisions of that statute which govern disposition of the instant proceeding are found in Section 200/15-60, the relevant portions of which state as follows:

> Taxing district property. All property belonging to any county, village or city, used exclusively for maintenance of the poor is exempt [from real estate taxation], as is all property owned by a taxing district that is being held for future expansion or development, *except if leased by the taxing district to lessees for use for other than public purposes.*
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> Also exempt are:
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> ***

> (b) all public buildings belonging to any county, township, city or incorporated town, with the ground on which the buildings are erected[.]

35 **ILCS** 200/15-60 (emphasis added).

It is well settled in Illinois that a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App. 3d 678 (4th Dist. 1994).

When applying these principles, it must be remembered that the term "exclusively," as used in the context of Section 200/15-60 and other property tax exemption provisions means "the primary purpose for which property is used and not any secondary or incidental purpose." Methodist Old People's Home v. Korzen (hereinafter "Korzen"), 39 Ill.2d 149 (1968). *See also*, Gas Research Institute v. Department of Revenue, 145 Ill. App. 3d 430 (1st Dist. 1987); Pontiac Lodge No. 294, A.F. and A.M. v. Department of Revenue, 243 Ill. App. 3d 186 (4th Dist. 1993).

The rationale for exempting applicant's property stems from the taxing authority inherent in all taxing districts. *See*, Wilson v. Board of Trustees of the Sanitary District of Chicago, *et al*., 133 Ill. 443, 465-466 (1890); People *ex rel* Lognecker v. Nelson, 133 Ill. 565 (1890); 55 **ILCS** 5/5-1024, 1025, 1031-1035.2. Specifically, the exemption, like that for state[6] property:

> ... rests upon the most fundamental principles of government, being necessary in order that the functions of government not be unduly impeded, and that the government not be forced into the inconsistency of taxing itself in order to raise money to pay over to itself, which money could be raised only by taxation ...[.]

6. That exemption is found in 35 **ILCS** 200/15-55.

United States v. Hynes, *et al.*, 20 F.3d 1437 (7th Cir. 1994), citing 12 Am. & English Encyclopedia.

The sole basis for exemption of property of the State of Illinois is ownership. Public Building Commission of Chicago v. Continental Illinois National Bank & Trust Company of Chicago, 30 Ill.2d 115 (1963). However, the first paragraph of Section 200/15-60 employs use language which indicates a legislative intent not "to exempt all property, of every kind and character belonging to [taxing districts]." Sanitary District of Chicago v. Martin, 173 Ill. 243, 248-249 (1898), (hereinafter "Martin"). Therefore, the subject property cannot qualify for exemption merely because the County owns it. *Id*. at 248. Rather, "the property claimed to be exempt must be owned and used in the manner specified in the law." *Id*. at 252.

The first paragraph of Section 200/15-60 expressly bars exemption where the property is "leased by the taxing district to lessees for use for other than public purposes." The Martin court, which held against exempting parcels located outside the jurisdiction of the Metropolitan Sanitary District of Greater Chicago, (a municipal corporation whose property is subject to exemption under 35 **ILCS** 15-75 if "used exclusively for public purposes …") explained similar statutory language as follows:

> It is contended that the words "public grounds" must be interpreted according to the general rule that general words following the specific enumeration of objects or things will be held to include only such objects or things as are of the same kind as those specifically enumerated. It has been said that a public market is a designated public place in a town or city to which all persons can repair who wish to buy or sell articles there exposed for sale [Citation omitted] and that a public square is intended for beauty and adornment and for the health and recreation of the public. [Citation omitted]. Both public markets and public squares are for the use of the public, - of all persons who, in the pursuit of business or pleasure, may have occasion to resort thereto, subject, of course, to whatever municipal regulations may be in force regulating the use of same. They are in this respect similar in their use to streets and alleys. The "public grounds" exempt from taxation referred to in this paragraph would therefore, under this rule of construction, *be construed to be grounds which are open for the designated use to the public generally*, and this view would

> seem to be emphasized by the qualifying clause, "used exclusively for public purposes."

Martin, at 249-250. (emphasis added).

B. Analysis

The present record verifies that: (1) applicant acquired ownership of the subject parcel on via a special warranty deed dated December 30, 1996; (2) applicant acquired the subject property with the intention of using the office building located thereon for its own purposes; (3) numerous commercial interests held leaseholds on various portions of the office building when applicant acquired its ownership interest;. (4) all of the leases contained provisions that effectively transferred the cost of any property and other taxes levied on the leaseholds to the lessees; (6) all of the leaseholds remained in effect throughout the 1996 assessment year; and (7) applicant did not actually begin using any portion of the subject property for its own purposes until April, 1997.

These facts raise several technical issues that must be resolved before analyzing the merits of applicant's exemption claim. First, the special warranty deed (Applicant Ex. No. 1) proves that applicant did not own the subject property until December 30, 1996. Thus, Section 200/9-185 of the Property Tax Code, which governs exemptions based on changes in ownership or use during any part of an assessment year,[7] effectively limits applicant's exemption claim to 1% of the 1996 assessment year.

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7. The relevant portion of Section 200/9-185 provides that:

> The purchaser of property on January 1 shall be considered the owner [who is therefore liable for any taxes due] on that day. However, when a fee simple title or lesser interest in property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Code, that property shall be exempt from the date of the right of possession, except that property acquired by condemnation is exempt as of the date the condemnation petition is filed. Whenever a fee simple title or lesser interest in property is purchased, granted taken or otherwise transferred from a use exempt from taxation under this Code to a use not so exempt, that

Second, it is well settled that "[w]here a tract is used for two purposes, there is nothing novel in exempting the part used for an exempt purpose and subjecting the remainder to taxation." Illinois Institute of Technology v. Skinner, 49 Ill.2d 59, 66 (1971), (hereinafter "IIT"). For this reason, it is entirely plausible to conclude, as did the Department, that: (1) the non-leased portions of the office building, and an appropriate percentage of the underlying ground, qualify for exemption under the "held for future expansion" language contained in Section 200/15-60; and (2) the leased portions thereof, and an appropriate percentage of the underlying ground, do not so qualify because they were "leased by the taxing district to lessees for use for other than public purposes."

This latter conclusion draws support from the leases (Applicant Ex. Nos. 3 through 14), which prove that the leased portions were used for non-exempt commercial purposes throughout 1996. Such commercial uses distinguish this case from Children's Development Center v. Olson, 52 Ill.2d 332 (1972), wherein the court held in favor of exempting a leasehold on grounds that: (1) *both* the lessor *and* the lessee were exempt entities; and (2) the lessee used the demised premises exclusively for purposes that would have qualified as exempt if the lessee *itself* had owned the property in question. Consequently, the court concluded that neither the lessor (a religious order) nor the lessee (a recognized institution of public charity) profited from the lease. *Id*. at 334-335.

In contrast, the commercial uses at issue herein are inherently designed to confer pecuniary gains primarily on the lessor, who benefits from the rental payments themselves, and also the lessees, who reap profits and other rewards generated by their respective commercial enterprises. *Accord*, People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136, 140 (1924); Salvation Army v. Department of Revenue, 170 Ill. App.3d 336, 344 (2nd Dist. 1988).

> property shall be subject to taxation from the date of the purchase or conveyance.

35 **ILCS** 200/9-185.

Therefore, the general public is but an incidental beneficiary of both the landlord-tenant relationship and any commercial activity occurring on the demised premises.

These incidental benefits are inconsistent with the standards articulated in Martin, *supra*, which unequivocally state that real estate owned by municipal corporations or taxing districts is not exempt unless the general public is the *primary* beneficiary of its use. Furthermore, this record does not support the inference that taxing the leased portions of the office building (and an appropriate percentage of the underlying ground) would unduly impede the functions of County government,[8] for *all* of the leases contain provisions that transfer the costs of real estate and other taxation from the applicant to the non-exempt lessees. For this and all the aforestated reasons, I conclude that the leased portions of the subject property (consisting of 155,409 square feet of the office building and an appropriate percentage of the underlying ground) were not in exempt use during any portion of the 1996 assessment year. Therefore, the Department's determinations with respect to these specific portions of the subject property should be affirmed.

Applicant attempts to defeat the above conclusions by relying on County of Hamilton v. Department of Revenue, 279 Ill. App.3d 639 (5th Dist. 1996). There, the court held in favor of exempting certain underground coal rights owned by the appellant county. The Department argued that the coal rights were not subject to exemption under the then-applicable version of Section 200/15-60 because it was possible that they could be leased for non-exempt commercial purposes at unspecified some point in the future.

8. *See*, discussion of United States v. Hynes, *et al.*, 20 F.3d 1437 (7th Cir. 1994), *supra*, at pp. 7-8.

The court rejected this argument as speculative. In doing so, it reasoned that:

> … the statute requires that all of the property of the county is tax-exempt if it [the appellant county] owns the property, if the property is being held for future expansion or development and if not *currently* [viz, during the tax year in question] leased for a non public purpose. [Citations omitted]
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> Further, we find that the Department's argument, that the coal reserves could only be used for nonpublic purposes, and thus, the counties is without merit. There are two reasons for our determination. First, to apply the statute as the Department insists would be to consider a future nonpublic use, which is not required to be shown under the statute. The statute only requires the applicant show that the property *is not being used currently for a non-public purpose.* Our reasoning on this issue conforms to the supreme court's reasoning in Harrisburg-Raleigh Airport Authority v. Department of Revenue, 126 Ill.2d 326 (326 (1989). In that case, the supreme court stated that if the property was *not currently used but was only being held for future expansion, then the property would have been tax exempt.* However, the property at issue in Harrisburg-Raleigh Airport Authority was being used,[9] and the use was not primarily for public purposes. [Citation omitted]. That is the situation in the instant case-the property is *not being used but was only being held for future development.* Second, the Department's decision [to deny exemption] is based on speculation. We decline to hold that the coal reserves held by the counties could never be leased other than for non-public purposes. This is especially true when there is a statute which allows a county to acquire property to operate to operate a coal processing plant and system or to acquire property necessary to process the coal. See 55 ILCS 100/0.01 *et seq*. (West 1994) the County Coal Processing Act. Therefore, we find that the trial courts' orders finding that the Department's findings and rulings were against the manifest weight of the evidence were not erroneous.

County of Hamilton, *supra* at 646-647. (emphasis added).

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9. The uses at issue in Harrisburg-Raleigh were those of a personal residence and a farm, uses which the court held non-exempt on grounds that their "current, primary uses" were not airport-related. Harrisburg-Raleigh, *supra* at 326, 342-343.

My research fails to disclose the existence of any statute granting this applicant (or any other county) authority to operate for-profit, commercial establishments. More importantly, the County of Hamilton court's concern for speculation is not present in the present record because the demised portions of the office building were *actually* being used for non-exempt commercial purposes throughout 1996. In this sense, the present case is more akin to Harrisburg-Raleigh Airport Authority, *supra*, wherein the court held against exempting real estate actually used for residential and farm purposes. Therefore, I conclude that applicant's reliance on County of Hamilton is misplaced, at least with respect to those portions of the subject property that were subject to leaseholds during 1996.

The County also argues that not exempting the entire subject parcel (including the leaseholds) violates the plain meaning of Section 200/15-60(b), wherein "all public buildings belonging to any county …, with the ground on which such buildings are erected[,]" are exempted from real estate taxation. This argument fails to recognize that applicant did not actually begin using the subject property for its own purposes until April, 1997. Therefore, it is more appropriate to conclude that the non-leased portions of the subject property were "being held for future expansion," as required by the omnibus provision contained in the first paragraph of Section 200/15-60, during that 1% of the 1996 assessment year wherein applicant owned the subject property. Furthermore, the leasing provisions contained in this omnibus provision, coupled with the analysis verifying that the leaseholds were not used for public purposes throughout 1996, (*see*, s*upra* at pp. 10-11), lead me to conclude that Section 200/15-60(b) is inapplicable herein.

Applicant next argues that the demised portions, and an appropriate percentage of their underlying ground, should be subject to leasehold assessments under Section 200/9-195 of the Property Tax Code. In relevant part, that provision states as follows:

> Except as provided in Section 15-55 [which governs exemption of property owned by the State of Illinois], when property *which is exempt from taxation* is leased to another whose property is not exempt, *and the leasing of which does not make the property taxable*, the leasehold estate and the appurtenances shall be listed as the property of the lessee thereof, or his or her assignee. Taxes on that property shall be collected in the same manner as property that is not exempt, and the lessee shall be liable for those taxes.

35 **ILCS** 200/9-195. (emphasis added).

The italicized portions of Section 200/9-195 prove that the instant case fails to invoke a leasehold assessment for two reasons. First, as demonstrated above, the demised portions were *not* "exempt from taxation" during that 1% of the 1996 tax year wherein applicant owned the subject property because said portions were "leased by the taxing district to lessees for use for other than public purposes," in violation of Section 200/15-60. Furthermore, the profit-oriented uses associated with commercial leasing are *exactly* what caused the demised portions to be taxable during that time. For these reasons, and because the public use requirement set forth in Section 200/15-60 substantiates that ownership *and* use, rather than ownership alone, is the appropriate standard for determining the exempt status of this applicant's property, I conclude that the demised portions do not satisfy the statutorily-mandated criteria for imposing leasehold assessments.

The testimony of Sam Pintacura, a supervisor in the Division Department of the Cook County Assessor, indicates that the Assessor adheres to a practice of imposing leasehold assessments on otherwise exempt properties, and that lessees subject to such leaseholds are legally responsible for paying any property taxes levied thereon. Tr. pp. 17-18. However, the preceding analysis demonstrates that imposing leasehold assessments is legally inappropriate in this present case. Moreover, while Section 200/9-195 does not expressly assign the Department

any role in imposing leasehold assessments, the Department *is* statutorily vested with administrative responsibility for determining whether all property located within the State of Illinois is legally liable to taxation. *See*, 35 **ILCS** 200/16-70, 16-130. Consequently, the Department's jurisdiction over exemption matters does not extend to any practices the Assessor may follow in imposing leasehold assessments on non-exempt lessees.

Mr. Pintacura's testimony also proves that the Assessor has imposed leasehold assessments on commercial establishments situated within the State of Illinois and County Buildings that are located in Chicago. Tr. pp. 18-20. Based on this testimony, applicant argues that failure to impose a leasehold assessment would constitute a violation of uniformity requirement set forth in Article IX, §4(a) of the Illinois Constitution.

This argument fails for several reasons. First, the exemption of State property is, unlike that of a taxing district, based *solely* on ownership. Public Building Commission of Chicago v. Continental Illinois National Bank & Trust Company of Chicago, 30 Ill.2d 115 (1963). Furthermore, the statute that authorizes exemption of State property, 35 **ILCS** 200/15-55, expressly provides for leasehold assessments on non-exempt users.[10] Based on these differences, I conclude that applicant is not similarly situated to the State. Therefore, disallowing applicant's

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10. The relevant portion of Section 200/15-55 states as follows:

> All property *belonging to* the State of Illinois is exempt. However, the State agency holding title shall file the certificate of [exempt] ownership and use required by Section 15-10 [of the Property Tax Code], together with a copy of any written lease or agreement, in effect on March 30 of the assessment year, concerning parcels of 1 acre or more, or an explanation of the terms of any oral agreement under which the property is leased, subleased or rented.
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> *The leased property shall be assessed to the lessee and the taxes thereon extended and billed to the lessee, and collected in the same manner as for property which is not exempt.* The lessee shall be liable for the taxes and no lien shall attach to property of the State.

35 **ILCS** 200/15-55.

request for leasehold assessments on the demised portions of the subject property does not violate the Constitutionally mandated uniformity requirement.

A slightly different rationale applies to the County Building and other properties on which the Assessor has imposed leasehold assessments. Although the County Building is applicant's own property, my comments (*supra* at p. 14) demonstrate that the demised portions of the subject property do not qualify for leasehold assessments under section 200/9-195. As such, it does not appear that these particular leaseholds are similarly situated to those in the County Building. More importantly, I must emphasize that the Department's jurisdiction over exemption matters does not extend to any practices that the Assessor may follow in imposing leasehold assessments on *non-exempt* lessees. Consequently, I am unable to discern any uniformity violations with respect to these properties.

In summary, the unleased portions of the office building located on the subject property (and an appropriate percentage of the underlying ground) qualify for exemption from real estate taxes for 1% of the 1996 assessment year under the plain meaning of the "held for future expansion" provisions contained in Section 200/15-60. However, the demised portions of that building (and an appropriate percentage of the underlying ground) do not qualify for that exemption because they were "leased by the taxing district to lessees for use for other than public purposes" in violation of the last clause of that same statute. Therefore, the Department's determination, which denied exemption to the 155,409 square feet so leased (and an appropriate portion of the underlying ground) should be affirmed as issued.

WHEREFORE, for all the above-stated reasons, it is my recommendation that: (1) the unleased portions, which occupy a total of 534,932 square feet or 77%, of the improvement located on real estate identified by Cook County Parcel Index Number 17-09-461-0139 be exempt from real estate taxes for 1% of the 1996 assessment year under 35 **ILCS** 200/15-60; (2) an appropriate amount of the ground underlying such non-leased portions also be exempt from real estate taxes for 1% of the 1996 assessment year under that same provision; (3) the leased portions, which occupy 155,409 or 23%, of the improvement located on that real estate, shall not

be exempt from real estate taxes for 1% of the 1996 assessment year under 35 **ILCS** 200/15-60; and (4) an appropriate amount of the ground underlying those leaseholds also shall not be exempt from real estate taxes for 1% of the 1996 assessment year under that same provision.

November 23, 1998
Date

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Alan I. Marcus
Administrative Law Judge